

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 12, 2014 appellant, then 56-year-old parcel post distribution machine clerk, filed an occupational disease claim (Form CA-2) for a bilateral lower extremity condition that allegedly arose in the performance of duty. He first became aware of the condition on May 10, 2010 and related it to factors of his federal employment on May 16, 2014. Appellant attributed his condition to standing, pushing, pulling equipment, and lifting, which put too much stress on his legs and feet. On December 8, 2014 OWCP initially denied the claim as the evidence was insufficient to establish a medical condition causally related to factors of his federal employment. Appellant retired effective December 15, 2014.

By decision dated April 29, 2015, OWCP accepted his occupational disease claim for aggravation of preexisting bilateral venous (peripheral) insufficiency. On May 3, 2015 appellant filed a claim for a schedule award (Form CA-7).

By letter dated May 18, 2015, OWCP requested that appellant submit an impairment rating in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). It provided him 30 days to submit the requested medical evidence.

In a June 3, 2015 report, Dr. Bradley Ropp, a Board-certified internist, indicated that appellant's severe venous insufficiency with chronic edema would continue to worsen over time, and represented a permanent deficit. He did not believe the condition was fixed or had reached a stable state, nor did he anticipate any improvement. Dr. Ropp indicated that appellant's was one of the worse cases of venous insufficiency edema he had seen in some time, and further commented that it had been recalcitrant to treatment.

By decision dated July 10, 2015, OWCP denied appellant's claim for a schedule award. It noted that Dr. Ropp's recent report did not include a permanent impairment rating of the lower extremities in accordance with the A.M.A., *Guides* (6th ed. 2009).

On November 9, 2015 appellant requested reconsideration and submitted a duplicate copy of the June 3, 2015 report of Dr. Ropp.

In a November 2, 2015 report, Dr. Ropp indicated that appellant's venous insufficiency had reached maximum medical improvement (MMI). He stated that it was a permanent problem in both of appellant's lower extremities with chronic bilateral lower extremity edema up to the thighs. Dr. Ropp described appellant's treatment and indicated that it could not be cured or improved. The only treatment for the problem at this time was use of compression stockings and elevation of the legs.

In a February 10, 2016 decision, OWCP denied modification of its July 10, 2015 decision. It found that while the medical evidence from Dr. Ropp indicated that appellant was at MMI, he did not provide an impairment rating of the bilateral lower extremities under the A.M.A., *Guides* (6th ed. 2009).

On March 10, 2016 appellant requested reconsideration.

In a February 29, 2016 report, Dr. Ropp discussed the nature and extent of appellant's accepted medical condition.² This included appellant's treatment and set forth detailed restrictions. Dr. Ropp indicated that appellant's venous insufficiency had progressively worsened and that he did not expect him to recover or have remission from this condition.

By decision dated March 15, 2016, OWCP denied appellant's request for reconsideration. The senior claims examiner found that Dr. Ropp's February 29, 2016 report was substantially similar to his previous reports dated June 3 and November 2, 2015, and thus, cumulative evidence. OWCP further found that the February 29, 2016 report was similarly devoid of an impairment rating under the A.M.A., *Guides* (6th ed. 2009).

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.³ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁴ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).⁵

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for an aggravation of preexisting bilateral venous (peripheral) insufficiency. On May 3, 2015 appellant filed a claim for a schedule award and later submitted Dr. Ropp's June 3, 2015 report. In a July 10, 2015 decision, OWCP denied appellant's claim for a schedule award. Appellant timely requested reconsideration and submitted another report from Dr. Ropp dated November 2, 2015. By decision dated February 10, 2016, OWCP denied modification of its prior decision finding that both the June 3 and November 2, 2015 reports failed to provide a bilateral lower extremity permanent impairment rating in accordance with the A.M.A., *Guides* (6th ed. 2009).

Appellant bears the burden of proof to demonstrate his entitlement to benefits under FECA.⁶ In May 2015, OWCP advised him of the necessity of submitting an impairment rating

² The report was directed to the Civil Service Retirement System and intended to support appellant's disability retirement.

³ 5 U.S.C. § 8107(c). For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

⁴ 20 C.F.R. § 10.404.

⁵ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013).

⁶ 20 C.F.R. § 10.115(f).

in accordance with the A.M.A., *Guides* (6th ed. 2009). Although Dr. Ropp found that appellant had reached maximum medical improvement and was permanently disabled, neither the June 3 nor November 2, 2015 reports included a bilateral lower extremity permanent impairment rating under the A.M.A., *Guides* (6th ed. 2009). Additionally, he did not identify any specific findings in determining the existence and extent of impairment. Before a case can be referred to the DMA, the attending physician should describe the impairment in sufficient detail to permit clear visualization of the impairment and the restrictions and limitations which have resulted.⁷

The current record does not support appellant's claim for a schedule award with respect to his employment injury. Accordingly, appellant has failed to meet his burden of proof.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.⁸ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁹ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.¹⁰ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹¹ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.¹²

⁷ *Supra* note 5 at Chapter 3.700.3a(2) (January 2010).

⁸ This section provides in pertinent part: “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his] own motion or on application.” 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.607.

¹⁰ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be “received” by OWCP within one year of OWCP’s decision for which review is sought. *Supra* note 5 at Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the “received date” in the Integrated Federal Employees’ Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

¹¹ 20 C.F.R. § 10.606(b)(3).

¹² *Id.* at § 10.608(a), (b).

ANALYSIS -- ISSUE 2

On February 10, 2016 OWCP issued a decision denying appellant's claim for schedule award compensation. The decision noted that although Dr. Ropp indicated that appellant had reached maximum medical improvement, the physician had not provided an impairment rating of the lower extremities in accordance with the A.M.A., *Guides* (6th ed. 2009). Appellant timely requested reconsideration, which OWCP denied on March 15, 2016.

In his March 10, 2016 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He also did not advance a new and relevant legal argument not previously considered. Appellant submitted the appeal request form that accompanied OWCP's February 11, 2016 merit decision. He did not otherwise elaborate regarding the particular basis for requesting reconsideration. Thus, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).¹³

Appellant's latest request for reconsideration was accompanied by a new report from Dr. Ropp dated February 29, 2016. The underlying issue is whether appellant submitted sufficient medical evidence to establish a ratable permanent impairment of the lower extremities due to his accepted employment injury, thereby warranting a schedule award. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but appellant did not submit any such evidence in this case.¹⁴ Although Dr. Ropp's February 29, 2016 report included a detailed discussion of appellant's accepted medical condition and set forth restrictions, the report did not contain a permanent impairment rating of the lower extremities. Also, Dr. Ropp did not provide any recent physical examination findings or otherwise describe appellant's condition in sufficient detail to permit clear visualization of the impairment.¹⁵ As such, Dr. Ropp's February 29, 2016 report is substantially similar to his prior reports. Providing additional evidence that repeats or duplicates information already in the record does not constitute a basis for reopening a claim.¹⁶ Because appellant did not provide OWCP with any "relevant and pertinent new evidence," he is not entitled to a review of the merits based on the third requirement under section 10.606(b)(3).¹⁷ Accordingly, OWCP properly declined to reopen appellant's case under 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a ratable permanent impairment of the lower extremities. OWCP also properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.606(b)(3)(i) and (ii).

¹⁴ See *B.D.*, Docket No. 16-1177 (issued October 27, 2016).

¹⁵ See *supra* note 7.

¹⁶ *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

¹⁷ 20 C.F.R. § 10.606(b)(3)(iii).

ORDER

IT IS HEREBY ORDERED THAT the March 15 and February 10, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 20, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board